HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE BILAL NAZKI

Writ Appeal Nos.1551 & 1552 of 2005

Dated:December 02, 2005

Between:

S. Venkateswara Rao … Appellant

And

Dy. Director, Mines & Geology,

Rajahmundry, East Godavari District,

and three others. … Respondents.

Per G.S. Singhvi, CJ

These appeals are directed against order dated 29-6-2005 by which the learned Single Judge dismissed the writ petitions filed by the appellants questioning the legality of notice-cum-order dated 16-4-2005 issued by the Deputy Director of Mines and Geology (respondent No.1) for cancellation of quarry lease granted to them.

The appellants were granted quarry lease for road metal in Ac.0.20 and Ac.0.40 respectively in S.No.54 of Yeleswaram Village, East Godavari District for ten years commencing from 15-12-1999. In 1993, the competent authority cancelled the mining lease on the premise that quarrying operation was prejudicial to Yeleswaram Reservoir Project. Similar action was taken against other lessees. Writ Petition No.8179 of 1993 and connected petitions filed by the persons whose leases

were cancelled were disposed of by a learned Single Judge vide his order dated 8.7.1993 with the direction to the Director, Mines and Geology to constitute an Expert Committee to make investigation and submit report. The operative portion of that order reads as under:

> I, therefore, direct each one of the petitioners to deposit a sum of Rs.5,000/- (Rupees five thousand only) within one week from today before the Director of Mines and Geology. On such deposit being made, an Expert Committee consisting of (1) the Director of Mines and Geology, (2) The Secretary of Irrigation and CAD Department, (3) the Chief engineer of irrigation and Power Department, (4) the Chief Engineer of CAD Department and (5) the Superintending Engineer, YRPC Circle, Kakinada shall visit the places where quarrying operations are conducted, after giving due notice to the petitioners and after conducting the necessary investigations into the matter, submit their report to the Deputy Director within six weeks thereafter. In the event of no such report being submitted within the time specified above, it shall be deemed that there is no objection for the petitioners carrying on quarrying operations. Basing on the said report of the Expert Committee, if submitted, or on the failure of submitting such a report within the time specified above, the Deputy Director shall consider the continuance of the quarrying leases in favour of the petitioners for the remaining period covered by their renewed leases within one month from the date of receipt of the Expert Committee report, if received.

In compliance of the aforementioned direction, the Director, Mines and Geology constituted an Expert Committee, which recommended that no mining operation be permitted within a radius of 300 meters of the project. The department considered the recommendations of the Committee and decided not to allow mining operation within a radius of 400 meters from the project. Accordingly, order dated 21-9-1993 was issued by respondent No.1 for closure of mines operating within the radius of 400 meters of Yeleswaram Reservoir Project.

It appears from the record that Assistant Director, Mines and Geology, Rajahmundry sent communication dated 30-9-2002 to respondent No.1 proposing cancellation of all quarry leases in S.No.54 of Yeleswaram Village and Mandal on the ground that mining operations were threatening the project. After some correspondence, the district authorities constituted another Expert Committee, which submitted report that all leases of mines operating within 500 meters of the project be cancelled. The department accepted the report of the Committee. Thereafter, respondent No.1 issued notice-cum-order dated 16-4-2005 under Rule 31 (xviii) of A.P. Minor Mineral Concession Rules, 1966 (for short ‘the Rules’) for determination

of the quarry leases of appellant and ten other similarly situated persons.

The appellants challenged the aforesaid show cause notice-cum-order, but could not persuade the learned single Judge to quash the same. In the opinion of the learned single Judge, the action taken by respondent No.1 was in public interest and did not call for any interference.

Sri K. Sarva Bhouma Rao, learned counsel for the appellant made a strenuous effort to persuade us to nullify show cause notice-cum-order dated 16-4-2005 by arguing that quarrying operations being undertaken by his clients are not detrimental to the project. Learned counsel argued that action under Rule 31 (xviii) of the Rules could not have been taken without complying with the rules of natural justice. He also made a grievance that before issuing the impugned notice-cum-order, respondent No.1 did not supply a copy of the report of the Expert Committee to the appellant and similarly situated persons and did not give them opportunity to represent against the recommendations of the Expert Committee.

In our opinion, there is no merit in either of the contentions of the learned counsel. It is to be seen from the record that even before the grant of quarry lease to the appellant, Executive Engineer (FAC), YRG Division, Yeleswaram, vide his letter dated 15.11.1999, drew attention of Assistant Director, Mines and Geology, Rajahmundry regarding instructions issued by the State Government, vide Memo No.34971/GV3/97-1 dated 13-9-1997 by which restriction was imposed on the grant of quarry lease in an area situated within 500 meters of the project. The relevant extracts of letter dated 15.11.199 are reproduced below:

> ”With reference to your letter cited above, I have to inform you that the site for the quarry in S.No54 proposed for granting lease for road metal was inspected on 6.11.1999 and found to be as follows:
>
> 1. The proposed site is beyond a radius of 400 mts. from the project site.
> 2. The proposed quarry is above FRD of the Yeleru Reservoir Project.
>
> Hence, the site satisfies the guidelines issued by the Expert Committee and there is no objection for granting lease to the applicant.
>
> However, I invite your attention to the Govt. Memo.No.34971/GV3/97-1, dt.13.9.97, wherein instructions were issued to the Director of Mines & Geology to …all the quarry leases of S.No.54 of Yeleswaram village which is situated within 500 mts. from the project area in and around Yeleswaram and C. Rayavaram village to avoid all complaints and apprehensions from the

villagers.

Therefore, I request you to follow the above instructions while granting the new quarry leases of the subject case with due instructions to the lease holder as per rules if the lease is granted.

It is beyond our comprehension as to how in the face of restriction imposed by the Government on the grant of quarry lease within a radius of 500 metres, the Department granted lease to the appellants on 14.11.1999 for undertaking mining operations within a radius of 400 metres of the project. We would have made detailed investigation into the mechanism evolved by the officers of the Mines and Geology Department in granting quarry leases in violation of the Government instructions, but, keeping in view the fact that leases to the appellant and similarly situated persons has been determined, we do not consider it necessary to do so.

The appellants' grievance against determination of mining lease deserves to be negatived in view of the plain language of Rule 31 (xviii), which reads as under:

31. Conditions of permit or lease: Every quarry lease shall, in addition to such conditions as may be specifically stipulate in each case, be subject to the following conditions, viz-

…

(xviii) The Deputy Director may, in consultation with the Government determine the lease, if it is considered by him necessary to do so in the public interest after giving two calendar months notice in writing;

A perusal of the above reproduced rule makes it clear that the Deputy Director can, in consultation with the State Government, determine the lease, if it is considered necessary to do so in public interest. In our opinion, prohibition of mining operations within the radius of 500 meters of an important public project is certainly in larger public interest. Mining operations within the specified distance is bound to endanger the project. If the reservoir is breached on account of the mining operations, then the lives of unknown number of people will be threatened. Therefore, the decision taken by the Department to determine the mining leases cannot but be treated in public interest. As a matter of fact, in **Mohd. Haroon Ansari v. District Collector, Ranga Reddy District, A.P.** the Supreme Court also directed imposition of restriction on the mining operations within the radius of 500 metres of

project area.

The plea of the appellants that action under Rule 31 (xviii) of the Rules could not have been taken without complying with the rules of natural justice appears attractive but lacks merit. That rule does not envisage giving of opportunity of hearing as a condition precedent to the determination of mining lease and we do not consider it proper to read such requirement as implicit in the scheme of that rule, because action thereunder is required to be taken in larger public interest.

There is another reason for not entertaining the appellants plea regarding violation of rules of natural justice. As mentioned above, even before the department sanctioned lease in their favour, Executive Engineer (FAC) Yeleswaram Division, Yeleswaram had invited the attention of the Assistant Director of Mines that Government had restricted grant of quarry leases in an area situated within 500 metrs of the project. The appellant and others must have aware of this restriction and, yet, they, in collusion with the departmental authorities, succeeded in obtaining leases. Therefore, we are not inclined to nullify the impugned action on the ground of violation of the rule of *audi alteram partem*.

We are also not impressed by the submission of the learned counsel that his client has not been supplied with a copy of the report of the Expert Committee. In the course of hearing, we asked the learned counsel to show whether before filing the writ petition his client had made an application to the concerned authority for supply of the copy of the report. To this, he could not give any reply. Therefore, at this belated stage, the appellant cannot be heard to make a complaint about alleged non-supply of copy of the report of the Expert Committee.

For the reasons mentioned above, we hold that the learned single Judge did not commit any error by refusing to annul the decision taken by the competent authority for determination of leases of the appellants and ten other similarly situated persons.

In the result, the appeals are dismissed.

(G.S. SINGHVI, CJ)

(BILAL NAZKI, J)

December 02, 2005

Svs/vtv